

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Public Land Order 7115

[UT-942-1430-01; UTU-52338]

**Partial Revocation of Executive Order of April 17, 1926, Public Water Reserve 107 Withdrawal; Utah**

AGENCY: Bureau of Land Management.

ACTION: Public land order.

**SUMMARY:** This order revokes Executive Order of April 17, 1926, insofar as it affects 40.84 acres of public land withdrawn as a public water reserve. The land is no longer needed for the purpose of the withdrawal, and the revocation is needed to permit disposal of the land through a land exchange under the authority of the Federal Land Policy and Management Act of 1976. This action will open the land to surface entry, and to mining for nonmetalliferous minerals. The land has been and will remain open to mineral leasing and mining for metalliferous minerals.

EFFECTIVE DATE: March 20, 1995.

## FURTHER FOR FURTHER INFORMATION

**CONTACT:** Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order of April 17, 1926, which withdrew public land containing springs and water holes as public water reserves, is hereby revoked insofar as it affects the following described land:

**Salt Lake Meridian**

T. 11 N., R. 19 W.,  
Sec. 4, lot 1;

The area described contains 40.84 acres in Box Elder County.

The land described above is no longer needed for the purpose for which withdrawn. There is no water on the parcel, nor evidence of any in the past.

2. At 9 a.m. on March 20, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 20, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on March 20, 1995 the land will be opened to location and

entry for nonmetalliferous minerals under the United States mining law, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 6, 1995.

**Bob Armstrong,**

Assistant Secretary of the Interior.

[FR Doc. 95-3893 Filed 2-15-95; 8:45 am]

BILLING CODE 4310-DQ-P

## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration****50 CFR Part 227**

[Docket No. 950201033-5033-01; I.D. 041294E]

RIN 0648-AG37

**Sea Turtle Conservation; Shrimp Trawling Requirements**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule allows non-Federal entities to apply for, and NMFS to issue, permits for the incidental take of threatened species of sea turtles consistent with section 10(a) of the Endangered Species Act (ESA). Under existing regulations, the prohibitions of section 9 of the ESA apply to both endangered and threatened species, but section 10 incidental take permits may be authorized for endangered, but not threatened, species of sea turtles. This regulation corrects this discrepancy in the application of sections 9 and 10 to threatened species of sea turtles.

EFFECTIVE DATE: March 20, 1995.

**ADDRESSES:** Requests for copies of the Environmental Assessment (EA) for the

proposed rule, should be addressed to Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:**

Heather Weiner, Endangered Species Division, 301-713-1401; Doug Beach, Protected Species Program Coordinator, NMFS Northeast Regional Office, 508-281-9254; or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813-570-5312.

**SUPPLEMENTARY INFORMATION:****Background**

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific Coast of Mexico, and the breeding population of olive ridley turtles on the Pacific Coast of Mexico, which are listed as endangered.

In a proposed rule published on July 21, 1994 (59 FR 37213), NMFS proposed to extend existing incidental-take permit regulations to all threatened species of sea turtles as authorized under section 10(a)(1)(B) of the ESA. Section 10 authorizes the Secretary of Commerce to permit under such terms and conditions as he or she may prescribe, any taking otherwise prohibited by section 9(a)(1)(B) of the ESA, if the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. NMFS implemented regulations for the application and issuance of incidental-take permits, under section 10(a) of the ESA, which appear at 50 CFR parts 220 and 222, and allow the Assistant Administrator for Fisheries, NOAA, (AA) to issue permits to incidentally take endangered marine species during otherwise lawful activities.

**Comments and Responses on the Proposed Rule**

NMFS received responses from four commenters, including the U.S. Department of the Interior, regarding the proposed rule. Commenters were generally supportive of the proposed rule, but expressed some concerns about permit issuance and review. NMFS reviewed all comments in detail and combined their common concerns for response.

*Comment:* Incidental take permits imply acceptance of the killing of threatened and endangered species. Granting exceptions to the ESA undermines the intent of the Act. Protective regulations for threatened species impacted by non-Federal entities should be issued under section 4(d) of the Act instead of through section 10 permits. If section 10 permits are allowed, then they should not be used as a means to avoid the required use of turtle excluder devices in shrimp fisheries.

*Response:* Section 10(a)(1)(B) of the ESA explicitly provides that the Secretary may permit any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The intent of this provision of the ESA is to allow non-Federal entities to carry out an activity that may incidentally take endangered species without jeopardizing the species, thereby extending the same allowance for Federal actions to non-Federal actions. Section 4(d) of the ESA allows NMFS to apply this provision and the takings prohibition of section 9, to threatened as well as endangered species.

As a Federal action that may affect listed species, the proposed issuance of a section 10 incidental take permit must be accompanied by a section 7 consultation. Through the consultation process, NMFS must ensure that the activity conducted under the permit, including the conservation plan, is not likely to jeopardize the listed species. This is the same substantive requirement applicable to regulations.

*Comment:* The section 10 incidental take permit program should require adequate Federal oversight of permits and conditions. NMFS must deny general permits to states unless there are adequate assurances that state applicants have the requisite legal authority, resources, and commitment to administer a statewide general permit under the required conservation plan. A conservation plan should provide for the registration of all vessels covered by the permit, observers on a substantial portion of the vessels, onshore and aerial observations, and procedures to halt the activity if conditions are being violated. In addition, applicants must demonstrate that they have sufficient resources and interest to provide adequate monitoring and enforcement of permit conditions, including an effective turtle stranding network to monitor mortalities.

*Response:* Both section 10 of the ESA and NMFS regulations (50 CFR 222.22(b)(5)) require permit applicants

to include a detailed conservation plan that specifies (among other things) the steps that will be taken to monitor, minimize, and mitigate the activity's impacts on listed species. The conservation plan must also detail the funding available to implement these measures. In addition, one of the criteria used to determine issuance is the availability of effective monitoring techniques. Conservation plans for incidental take permits for commercial fisheries that incidentally take sea turtles may include requirements such as observer coverage, aerial surveys, and a monitoring network to document turtle strandings as necessary, depending on the activity involved.

If the permit holder fails to comply with the conditions of the permit or with any applicable laws or regulations governing the conduct of the permitted activity, then NMFS may suspend or revoke the permit pursuant to 50 CFR 227.27. In a state that has an authorized general section 10 permit, those vessels that wish to conduct an activity covered by the permit must apply to NMFS for a certificate of inclusion. Certificates of inclusion may also be suspended or revoked if the certificate holder fails to comply with the applicable terms of the permit.

*Comment:* Adequate procedural safeguards should be added to ensure that interested parties receive timely notice and meaningful opportunity to comment on applications for incidental take permits.

*Response:* Under existing NMFS regulations (50 CFR 222.24) and guidelines, a notice of receipt of a completed permit application is published in the **Federal Register** with a 30-day comment period. The permit application is then distributed to interested parties for review and comment. All comments received are reviewed and considered prior to final agency action on the permit application. In addition, any commenter may request a hearing. Specific questions raised by reviewers are directed anonymously to the applicant for reply. If the issuance of the permit may significantly affect the human environment, then an environmental assessment is prepared, as required by the National Environmental Policy Act. Because issuance of an incidental take permit is a Federal action that may affect the listed species, consultation pursuant to section 7 is required. The permit application may be altered, denied or issued based on the public comments and environmental compliance reviews. NMFS will make every effort to ensure that comments are adequately responded to in the applicable section 7

consultations and environmental assessments.

*Comment:* NMFS recently issued a joint policy with the U.S. Fish and Wildlife Service (USFWS) regarding Habitat Conservation Plans (HCPs) under section 10 of the ESA. This policy should not apply to section 10 permits for sea turtles because the conservation plans do not involve private ownership, but address the taking of public resources from public trust waters.

*Response:* NMFS agrees. The "No Surprises" policy states that the purpose of the policy is to provide assurances to non-Federal landowners participating in Habitat Conservation Planning that "no additional land restrictions or financial compensation will be required from an HCP permittee for species adequately covered by a properly functioning HCP in light of unforeseen or extraordinary circumstances."

*Comment:* Permits should be issued for periods not to exceed 1 year because conditions may change altering the necessity for exemptions and modifications to existing ESA rules governing turtles.

*Response:* NMFS agrees that circumstances may change that alter the conditions of the activity or the status of the species, thereby requiring alterations to the terms of the permit. However, NMFS regulations set neither a minimum nor maximum time limit to incidental take permits. Regulations at 50 CFR 222.22(e) state that the duration of the permit is related to the duration of the proposed activities, as well as the possible positive and negative effects associated with issuing a permit of the proposed duration. Rather than requiring annual renewals of all section 10 permits, NMFS may require either periodic renewals or reviews and, if needed, require applicable modifications. The timing of that review will depend on the nature of the permitted activity, and will be set as a condition of the permit. Additionally, permit holders will be required to submit reports on the implementation of and activities conducted under the conservation plan.

### **Final Regulations and Changes From the Proposed Rule**

The purpose of this final rule is to amend the existing regulations to allow NMFS to authorize incidental take permits for threatened, as well as endangered, species of sea turtles. The final regulations are identical to those published in the proposed rule. NMFS has determined that no changes to the text of the regulations are necessary.

The general permit procedures in 50 CFR part 220, as well as the endangered

species permit requirements in 50 CFR part 222, apply to the application, issuance, modification, revocation, suspension, and amendment of an incidental take permit for threatened, as well as for endangered sea turtles.

#### Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been approved previously by the Office of Management and Budget (OMB) (OMB Control Number 0648-0230). The reporting burden for this collection is estimated to average approximately 80 hours for permit applications, 0.5 hours for certificate of inclusion applications and 0.5 hours for reports. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR), 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attn: PRA Project 0648-0230).

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have significant economic impact on a substantial number of small entities because the final rule establishes a discretionary permitting procedure that will, by itself, have no economic impact. As a result, a regulatory flexibility analysis was not prepared.

The AA prepared an EA for the proposed rule that concludes that the rule would have no significant impact on the human environment. A copy of the EA is available (see ADDRESSES) and comments on it are requested.

#### List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: February 10, 1995.

**Nancy Foster,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

#### PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(1) introductory text is revised and paragraph (e)(7) is added to read as follows:

#### § 227.72 Exceptions to prohibitions.

\* \* \* \* \*

(e) \* \* \* (1) *General.* The prohibitions against taking in § 227.71(a) do not apply to the incidental take of any member of any species of sea turtle listed in § 227.4 (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with the requirements of paragraphs (e)(1), (2), (3), and (6) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (e)(7) of this section.

\* \* \* \* \*

(7) *Incidental-take permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited in § 227.71(a) of this chapter in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the provisions of parts 220 and 222 of this chapter. Such permits may be issued for the incidental taking of both endangered and threatened species of sea turtles. This section supersedes restrictions on the scope of parts 220 and 222, including, but not limited to, the restrictions specified in §§ 220.3, 222.1, 222.2(a) and 222.22(a).

\* \* \* \* \*

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#### 50 CFR Part 625

[Docket No. 950206038-5038-01; I.D. #103194A]

RIN 0648-XX04

#### Summer Flounder Fishery; Final Specifications for 1995

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final specifications for the 1995 summer flounder fishery.

**SUMMARY:** NMFS issues the final specifications for the 1995 summer flounder fishery, which include

commercial catch quotas and mesh size requirements. The intent of this document is to comply with implementing regulations for the fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of the summer flounder resource. In order to comply with an Order issued by the U.S. District Court for the Eastern District of Virginia, this document adds 3.05 million lb (1.4 million kg) to the final commercial catch quota established under the implementing regulations.

**EFFECTIVE DATE:** February 10, 1995.

**ADDRESSES:** Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

**FOR FURTHER INFORMATION CONTACT:** Hannah Goodale, 508-281-9101.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

Section 625.20 specifies the process for setting annual management measures for the summer flounder fishery. Pursuant to § 625.20, the Director, Northeast Region, NMFS, implements certain measures for the fishing year to ensure achievement of the appropriate fishing mortality rate. These measures include the following, which, with the exception of measure (1) below, are unchanged from the proposed 1995 specifications that were published in the **Federal Register** on December 2, 1994 (59 FR 61864); note that all quota figures are rounded for the convenience of the reader: (1) A coastwide commercial quota of 14.7 million lb (6.7 million kg); (2) a coastwide recreational harvest limit of 7.8 million lb (3.5 million kg); (3) no change from the present minimum commercial fish size of 13 inches (33 cm); and (4) no change in the present minimum mesh restriction of 5.5-inch (14.0 cm) diamond or 6-inch (15.2 cm) square.